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10/772,121

02/04/2004

Jason Clay Pearson

71580/US02

4287

71466

7590

03/18/2009

LOUIS N. MORENO

P.O. BOX 511 , B-75

KINGSPORT, TN 37662

EXAMINER

SZEKELY, PETER A

ART UNIT

PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: JASON CLAY PEARSON, DOUGLAS STEPHENS
MCWILLIAMS, GETHER IRICK, JR., and MAX ALLEN WEAVER

Application No. 10/772,121
Technology Center 1700

Mailed: March 18, 2009

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 11, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellants filed an Appeal Brief dated January 4, 2008. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c) (v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. While reference to page and line number of the specification **>requires< somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. >For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 2-12 of the Appeal Brief filed January 4, 2008 is deficient because it does not separately map independent claims 1, 5, 14, and 28 to the specification. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed in this application on March 28, 2008. There is no evidence on the record indicating that the Examiner has considered the Reply Brief in accordance with 37 CFR CFR § 41.43(a)(1) and MPEP § 1208, part II.

EXAMINER'S ANSWERS

Appellants filed a petition for review on March 28, 2008 requesting that the Examiner's Answers filed April 9, 2008 be deemed to contain a new grounds of rejection. The petition was granted. The previous Examiner's Answer was vacated and the Examiner is required to file a corrected Examiner's Answer that withdraws the previous rejections, identifies the new rejection as a new ground of rejection and includes the approval of the TC Director or designee. Correction of the record is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

1) hold the Appeal Brief filed January 4, 2008 defective, as required by 37 CFR § 41.37(d);

2) notify the Appellants to submit a “paper” which corrects the Appeal Brief’s Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);

3) acknowledge and consider any “paper” submitted by Appellants to correct the Appeal Brief;

4) consider the Reply Brief filed March 28, 2008 as indicated above;

5) file a corrected Examiner’s Answer; and

6) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/MTV/cdc

LOUIS N. MORENO
P.O. BOX 511, B-75
KINGSPORT TN 37662